

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONNA E. HEARD-FOSTER and U.S. POSTAL SERVICE,  
POST OFFICE, East Hartford, CT

*Docket No. 99-375; Submitted on the Record;  
Issued April 5, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she has a permanent impairment for which she is entitled to a schedule award.

The Board finds that appellant did not meet her burden of proof to establish that she has a permanent impairment for which she is entitled to a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,<sup>2</sup> including that she sustained an injury in the performance of duty as alleged and that her disability, if any, was causally related to the employment injury.<sup>3</sup> Section 8107 of the Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>4</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office of Workers' Compensation Programs has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>5</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> 5 U.S.C. § 8107(a).

<sup>5</sup> *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

On June 18, 1988 appellant, then a 44-year-old clerk, sustained an employment-related lumbar and left foot strain. Appellant began working in a light-duty position for the employing establishment and received compensation for periods of disability; she later claimed that she was entitled to a schedule award due to her employment injury. By decision dated February 14, 1997, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence showing that she has a permanent impairment which would entitle her to a schedule award. By decision dated October 9, 1997, the Office denied modification of its February 14, 1997 decision.

The Board finds that appellant did not submit sufficient medical evidence to establish that she has a permanent impairment for which she is entitled to a schedule award.

Appellant submitted an October 7, 1996 report in which Dr. Allen P. Schlein, an attending Board-certified orthopedic surgeon, diagnosed chronic lumbar strain and determined that she has a three percent permanent impairment of her lumbar spine "based on [her] examination and symptomatic complaints."<sup>6</sup> Dr. Schlein indicated that appellant exhibited pain and tenderness in her lumbar region; that she had full range of motion in the joints of her lower extremities without neurovascular deficit; that straight leg raising signs were negative; and that there was no evidence of atrophy or fasciculations in her lower extremity muscles. Dr. Schlein stated that the results of electromyogram and computerized axial tomography testing were negative.

In a report dated December 1, 1996, an Office medical consultant properly determined that Dr. Schlein's report did not show that appellant had a permanent impairment which would entitle her to a schedule award. He correctly noted that Dr. Schlein's report did not show that appellant had any permanent impairment of her lower extremities and that, therefore, there was no basis under the A.M.A., *Guides* for a schedule award. Although appellant exhibited some back problems, a schedule award is not payable for the loss, or loss of use, of a part of the body that is not specifically enumerated under the Act. Neither the Act nor its implementing regulations provides for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of organ under the Act.<sup>7</sup>

In a report dated June 24, 1997, Dr. Schlein stated that he disagreed that appellant could not be awarded disability for a "soft tissue lesion of her back as noted by the diagnosis of chronic lumbar strain." He indicated that appellant had degenerative lumbar disc disease and noted, "I also have reviewed the A.M.A., *Guides* which allow for up to five percent of the entire body for soft tissue disorders of the lumbar spine." However, as noted above, a schedule award is not payable for impairment to the back or to the body as a whole. The opinion of Dr. Schlein is of limited probative value in that he failed to provide an explanation of how his assessment of permanent impairment was derived in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.<sup>8</sup> As the report of the Office

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<sup>6</sup> Dr. Schlein stated that her problems "may be related to the injury sustained on June 18, 1988."

<sup>7</sup> *James E. Mills*, 43 ECAB 215, 219 (1991); *James E. Jenkins*, 39 ECAB 860, 866 (1990).

<sup>8</sup> See *James Kennedy, Jr.*, *supra* note 5, (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in

medical consultant provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.<sup>9</sup>

The decision of the Office of Workers' Compensation Programs dated October 9, 1997 is affirmed.

Dated, Washington, D.C.  
April 5, 2000

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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determining the extent of a claimant's permanent impairment).

<sup>9</sup> See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).